Sandrifarm Sdn Bhd v Pegawai Pemegang Harta Malaysia

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO N–02–300 OF 1998
SHAIK DAUD, SITI NORMA YAAKOB AND DENIS ONG JJCA
18 FEBRUARY 2000

Contract Law — *Sale and purchase of land — Sale and purchase agreement not executed yet — Whether contract valid — Whether subsequent valuation should be considered to determine inadequacy of consideration or fraud or misrepresentation*

By a letter dated 13 September 1997, the respondent informed the appellant that the respondent's head office had approved the sale of a piece of land held under Geran No 17268 Lot No 4034, Mukim of Port Dickson ('the land'). The appellant then paid RM190,000 being 10% of the purchase price. After amendments had been made to the draft copy of the sale and purchase agreement, the appellant forwarded fair copies of the agreement to the respondent which the respondent failed to execute. One month later, the respondent requested the government valuer to value the land where the land was valued at RM3.765m. Based on this report, the respondent refused to conclude the sale and the appellant filed the originating summons for a declaration that the respondent execute the sale and purchase agreement and complete the sale. The learned judge held that there was inadequacy of consideration as the purchase price was grossly undervalued and the inadequacy of the consideration may be taken into account in determining the question of whether the consent of the promisor was freely given. The learned judge also held that the difference in the value of the land may reflect misrepresentation and fraud. The issue was whether a valid contract was formed between the parties even though a valid sale and purchase agreement had not been executed.

Held, allowing the appeal:

(1) A valid enforceable contract had materialized between the parties. The offer to sell was made by the respondent and this offer was accepted by the appellant. In accordance with the terms of the sale, the appellant remitted the 10% deposit amounting to RM190,000 which amount was duly received by the respondent and they issued a receipt for it. The parties, the property, the price and the terms have been identified with sufficient certainty. Such an agreement is enforceable as if it was embodied in a sale and purchase agreement (see p 538E–G); *Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327 followed.

(2) The second valuation given after the contract had been formed is irrelevant and ought not to be considered. The respondent ought to have the value of the land determined before they made the offer to sell. The question of the consent of the promisor not given

freely does not arise (see p 539A–C). There was no evidence of any misrepresentation or fraud. The respondent openly entered into this agreement without any misrepresentation by any party. Their omission or neglect to obtain an independent opinion on the value of the land before they made the offer to the appellant ought not to be blamed on the appellant (see p 539D–E).

[Bahasa Malaysia summary

Melalui surat bertarikh 13 September 1997, responden telah memberitahu perayu bahawa ibu pejabat responden telah meluluskan penjualan sebidang tanah yang dipegang di bawah Geran No 17268 Lot No 4034, Mukim Port Dickson ('tanah tersebut'). Kemudian perayu membayar RM190,000 sebagai 10% harga belian tersebut. Selepas pindaan-pindaan telah dibuat ke atas salinan deraf perjanjian jual beli tersebut, perayu telah menghantar salinan akhir perjanjian tersebut kepada responden di mana responden telah gagal melaksanakannya. Sebulan kemudian, responden telah meminta penilai untuk menilai tanah tersebut di mana tanah tersebut telah dinilaikan pada RM3,765 juta. Berdasarkan laporan tersebut, responden enggan melaksanakan jualan tersebut dan perayu telah memfailkan saman pemula untuk deklarasi agar responden melaksanakan perjanjian jual beli dan menyempurnakan jualan tersebut. Hakim yang arif memutuskan terdapat balasan yang tidak mencukupi kerana harga belian adalah jauh di bawah harga pasaran dan kekurangan balasan boleh diambil kira di dalam menentukan persoalan sama ada persetujuan penjanji (promisor) telah diberikan secara bebas. Hakim yang arif juga memutuskan bahawa perbezaan di dalam nilai tanah mungkin membayangkan salah nyata dan frod. Isu adalah sama ada suatu kontrak yang sah telah dibentuk antara pihak-pihak walaupun suatu perjanjian jual beli yang sah belum lagi dilaksanakan.

Diputuskan, membenarkan rayuan tersebut:

(1) Suatu kontrak sah telah wujud antara pihak-pihak. Tawaran untuk menjual telah dibuat oleh responden dan tawaran ini telah diterima oleh perayu-perayu. Atas dasar terma-terma penjualan tersebut, perayu telah menyerahkan 10% deposit sebanyak RM190,000 di mana jumlah tersebut telah diterima oleh responden dan mereka telah mengeluarkan resit untuknya. Pihak-pihak, harta tanah, harga dan terma-terma telah ditentukan dengan kepastian yang mencukupi. Perjanjian sebegini boleh dikuatkuasakan seolah-olah ia terkandung di dalam perjanjian jual beli tersebut (lihat ms 538E–G); *Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327 diikut.

(2) Penilaian kedua yang diberikan selepas kontrak telah dibentuk adalah tidak berkaitan dan tidak patut dipertimbangkan.

A Responden patut menentukan nilai tanah tersebut sebelum mereka menawar untuk menjual. Persoalan persetujuan penjanji yang tidak diberi secara bebas tidak timbul (lihat ms 539A–C). Tiada terdapat keterangan mengenai sebarang salah nyata atau frod. Responden secara terbuka memasuki perjanjian tersebut tanpa sebarang salah nyata oleh mana-mana pihak. Ketinggalan B serta kelalaian mereka untuk memperolehi pendapat yang bebas berkenaan dengan nilai tanah tersebut tidak boleh dipersalahkan kepada perayu (lihat ms 539D–E).]

Notes

C For cases on sale of purchase of land, see 3 *Mallal's Digest* (4th Ed, 1997 Reissue) at paras 2799–2914.

Cases referred to

D *Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327 (folld)

Legislation referred to

Bankruptcy Act 1967 s 85(3)
Contracts Act 1950 ss 21, 26

E **Appeal from:** High Court Originating Summons No 24–681 of 1997 (High Court, Seremban)

M Pathmanathan (*Yee Yeck Fah & Co*) for the appellant.
Zaliha bte Mohd Janis (Official Assignee Department) for the respondent.

F **Shaik Daud JCA** (delivering judgment of the court): This is an appeal against the decision of the Seremban High Court given on 29 April 1998 whereby the learned judge dismissed the originating summons dated 7 November 1997 ('the OS'). The OS was filed by the appellant for a declaration that, the appellant had accepted the respondent's offer to purchase a piece of land and for an order that the respondent do sign the G sales and purchase agreement and complete the sale.

The facts of the case which are not in dispute are that by a letter dated 13 September 1997, the respondent informed the appellant that the respondent's head office had approved the sale of 9,461.107/10,000 shares in a piece of land held under Geran No 17268 Lot No 4034, Mukim of Port Dickson ('the said land'). This sale was to be by private treaty to the H appellant subject to the terms and conditions contained therein. They are:

(a) Sale price shall be RM1.9m

(b) The sale is subject to all existing encumbrances.

(c) The official assignee shall not be responsible should the purchaser fail I to effect a transfer of the title.

(d) The official assignee shall be absolved from any costs incurred in the sale.

(e) Payment of 10% of the purchase price shall be made within seven days from the receipt of the letter of offer and to pay the balance within a period of three months, thereafter.

The terms appeared to be quite normal and the appellant duly accepted the offer and on 15 September 1997, paid a sum of RM190,000 being 10% of the purchase price. The respondent issued a receipt for the same. Thereafter the appellant forwarded a draft copy of the sale and purchase agreement for the attention and approval of the respondent. The respondent made several amendments to the draft and returned the same to the appellant. The appellant agreed to the amendments and fair copies of the agreement were forwarded to the respondent for execution. The respondent did not execute the agreement. One month later the respondent requested the government valuer to value the said land. The government valuer in his report dated 27 October 1997, valued the said land to be RM3.765m. Based on this report the respondent refused to conclude the sale, and filed a summons-in-chambers for an order to cancel the sale and purchase agreement under s 85(3) of the Bankruptcy Act 1967. This was later withdrawn.

The appellant then filed the originating summons for a declaration that the respondent had accepted the offer to purchase the said land and for an order that the respondent do execute the sale and purchase agreement and complete the sale. There are two issues to be decided. First and more importantly, whether a valid contract has been formed between the parties even though a valid sale and purchase agreement had not been executed yet. Secondly whether it is justifiable to refuse the appellant the reliefs sought for.

In the circumstances of this case, we find no difficulty in holding that a valid enforceable contract had materialized between the parties. The offer to sell was made by the respondent and this offer was accepted by the appellant. In accordance with the terms of the sale, the appellant remitted the 10% deposit amounting to RM190,000 which amount was duly received by the respondent and they issued a receipt for it. Therefore, a valid enforceable contract had been formed. The parties have been identified, the property, the price and the terms too have been identified with sufficient certainty. Such an agreement is enforceable as if it was embodied in a sale and purchase agreement. Our finding is fortified by the decision in *Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327.

After the respondent had accepted the RM190,000 they appeared to have a change of heart. They then requested the government valuer to value the said land and the government valuers came out with a report that the said land was worth RM3.765m. The learned judge accepted this and held that there was inadequacy of consideration as the purchase price was grossly undervalued and the agreement was void. We are of the view that the learned Judge went off tangent when he considered ss 21 and 26 of the Contracts Act 1950. The learned judge held that the inadequacy of the consideration may be taken into account in determining the question of whether the consent of the promisor was freely given. He held that the

respondent did not freely consent to sell the said land to the appellant at the agreed price. Therefore he held that the agreement is void. He thereby concluded that since the value of the said land as agreed by the respondent was grossly undervalued, the respondent is at liberty to refuse to complete the contract. We are of the view that the second valuation given after the contract had been formed is irrelevant and ought not to be considered. The respondent ought to have the value of the said land determined before they made the offer to sell. Having accepted the value to be RM1.9m, they made the offer to the appellant who accepted the offer. Once the respondent accepted the deposit of RM190,000 a valid and enforceable contract had materialized. Had the appellant failed to pay the balance of the purchase price within the stipulated period of three months the respondent would be entitled to forfeit the deposit and the contract would come to an end. Therefore the question of the consent of the promisor not given freely does not arise. The learned federal counsel conceded that it is not in issue that the consent was not freely given.

We held that the learned judge erred when he concluded that the difference in the value of the said land was bordering on misrepresentation at its lowest and fraud at its highest. There was no evidence of any misrepresentation or fraud. The respondent openly entered into this agreement without any misrepresentation by any party. Their omission or neglect to obtain an independent opinion on the value of the said land before they made the offer to the appellant ought not to be blamed on the appellant. We would conclude by quoting what was said in the *Charles Grenier*'s case at p 335:

> Unless the approach we have stated is adopted, a party to a contract who after having concluded his bargain - entertains doubts as to the wisdom of the transaction, may be in the unfairly advantageous position to invent all sorts of imaginary terms upon which disagreement may be expressed when the more formal document is being prepared in order to escape from his solemn promise. Businessmen would find the law to be a huge loophole and commerce would come to a virtual standstill.

We hold that the learned judge erred in dismissing the appellant's OS. We allowed the appeal with costs here and below entered judgment for the appellant in terms of prayers 1 and 2 of the OS and ordered that the deposit be refunded.

Appeal allowed.

Reported by Benjamin Yong